

No. 23-1078

IN THE
United States Court of Appeals
for the Fourth Circuit

B.P.J., by her next friend and mother, HEATHER JACKSON,

Plaintiff-Appellant,

v.

WEST VIRGINIA STATE BOARD OF EDUCATION, HARRISON COUNTY BOARD OF EDUCATION,
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, DORA STUTLER in her official capacity as Harrison
County Superintendent, and THE STATE OF WEST VIRGINIA,

Defendants-Appellees,

and

LAINEY ARMSTEAD,

Intervening Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of West Virginia, No. 2:21-cv-00316
Honorable Joseph R. Goodwin

**MOTION OF NATIONAL WOMEN'S LAW CENTER AND 51 ADDITIONAL
ORGANIZATIONS TO FILE BRIEF OF AMICI CURIAE IN SUPPORT OF
PLAINTIFF-APPELLANT**

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April 3, 2023

MOTION TO FILE *AMICI CURIAE* BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), *amici curiae* National Women's Law Center, A Better Balance, American Federation of Teachers, Anti-Defamation League, Autistic Self Advocacy Network, California Women's Law Center, Center for Women's Health and Human Rights, Suffolk University, Clearinghouse on Women's Issues, Collective Power for Reproductive Justice, Desiree Alliance, Equal Rights Advocates, Equality California, Equity Forward, Family Equality, Feminist Majority Foundation, FORGE, Inc., Gender Justice, Gibbs Law Group, Girls for Gender Equity, GLBTQ Legal Advocates & Defenders, GLSEN, Human Rights Campaign Foundation, If/When/How: Lawyering for Reproductive Justice, KWH Law Center for Social Justice and Change, Lawyers Club of San Diego, Medical Students for Choice, NARAL Pro-Choice America, National Association of Social Workers, National Center for Lesbian Rights, National Crittenton, National Organization for Women Foundation, National Women's Political Caucus, Oasis Legal Services, Physicians for Reproductive Health, Planned Parenthood South Atlantic, Progress Florida, Public Counsel, Public Justice, Religious Coalition for Reproductive Choice, Reproductive Health Access Project, SIECUS, SPARK Reproductive Justice NOW, Squire Patton Boggs US LLP, Stop Sexual Assault in Schools (SSAIS), The Women's Law Center of Maryland, Tom Homann LGBTQ+ Law Association, Washington Lawyers'

Committee for Civil Rights and Urban Affairs, Women Lawyers Association Los Angeles, Women Lawyers On Guard Inc., Women’s Bar Association of the District of Columbia, Women's Law Project, and WV FREE (West Virginia Focus: Reproductive Education and Equity) move for leave to file the attached brief *amicus curiae* in support of Plaintiff-Appellant.

Plaintiff-Appellant, Defendants-Appellees West Virginia State Board of Education, Harrison County Board of Education, W. Clayton Burch, Dora Stutler, and the State of West Virginia, and Intervenor-Defendant-Appellee Lainey Armstead have all consented to the filing of this *amicus* brief. Defendant-Appellant West Virginia Secondary School Activities Commission has stated that it takes no position on the filing of this brief, and thus, *amici* file this motion to seek leave.

I. Interests of *Amici Curiae*.

This brief is filed by *amici* National Women’s Law Center (“NWLC”) and 51 additional organizations committed to gender justice, including the rights of lesbian, gay, bisexual, transgender, queer, and intersex (“LGBTQI”) individuals, and to protecting women and girls from discrimination, including women and girls of color from discrimination on the basis of race and sex.

Lead *amici* NWLC is a nonprofit organization that fights for gender justice—in the courts, in public policy, and in our society—working across issues that are central to the lives of women and girls—with a particular focus on women and girls

of color, LGBTQI people, and low-income women and families. Since 1972, NWLC has worked to secure equal opportunity in education for women and girls through full enforcement of the U.S. Constitution, Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. § 1681 *et seq.*, and other laws prohibiting sex discrimination.

NWLC, along with many other *amici*, has participated as counsel or *amicus curiae* in cases before the Supreme Court and federal courts of appeal to secure equal treatment and opportunity based on sex, including in cases related to the participation of transgender students in school athletics, *see, e.g., Hecox v. Little*, No. 20-35813, 2023 WL 1097255 (9th Cir. Jan. 30, 2023); *A.M. by E.M. v. Indianapolis Pub. Sch. & Superintendent*, No. 22-2332, 2023 WL 371646 (7th Cir. Jan. 19, 2023); *Soule by Stanescu v. Connecticut Ass’n of Sch., Inc.*, 57 F.4th 43 (2d Cir. 2022), and to the other policies concerning transgender individuals, *see Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791 (11th Cir. 2022); *Corbitt v. Taylor*, No. 21-10486 (11th Cir. filed Feb. 12, 2021). NWLC has long worked for the full enforcement of Title IX, and seeks to ensure that all individuals, including LGBTQI individuals, enjoy strong legal protections against sex discrimination.

NWLC and the additional *amici* have a shared interest in ensuring that protections against sex discrimination include protections for LGBTQI students. As

a group of organizations, *amici* are dedicated to ensuring that all women and girls are protected from discrimination based on sex stereotypes, particularly women and girls of color who face heightened discrimination based on race and sex. *Amici* include organizations that are experts in securing protections against sex discrimination, including under Title IX and the U.S. Constitution, and advocating for the rights of LGBTQI people, including in educational settings.

II. Why the *Amici Curiae* Brief is Desirable and the Matters Asserted Are Relevant to the Disposition of the Case.

The attached brief outlines the harm West Virginia House Bill 3293 (“H.B. 3293”) will continue to have on all women and girls in violation of Title IX and the Equal Protection Clause. The brief also details how H.B. 3293 will harm not only women and girls who are transgender, but will also harm women and girls who are intersex, and Black and brown women and girls.

Amici submit this brief to make clear to the Court that organizations committed to women’s and girls’ rights firmly recognize that gender equity in schools requires equal access to participation in athletics for transgender women and girls.¹ *Amici* reject a framework that incorrectly assumes that the rights of cisgender

¹ See, e.g., Letter from NWLC et al. to Senate Judiciary Comm., *Statement of Women’s Rights and Gender Justice Organizations in Support of the Equality Act*, (Mar. 16, 2021), <https://nwlc.org/resources/statement-of-womens-rights-and-gender-justice-organizations-in-support-of-the-equality-act-2/>; NWLC et al., *Statement of Women’s Rights and Gender Justice Organizations in Support of Full and Equal Access to Participation in Athletics for Transgender People* (Apr. 9,

and transgender women and girls are pitted against each other in sports and elsewhere.

III. CONCLUSION

For the foregoing reasons, the Court should grant the motion for leave to file a brief *amicus curiae*.

April 3, 2023

Respectfully submitted,

/s/ Jessica L. Ellsworth

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2019), <https://nwlc.org/wp-content/uploads/2019/04/Womens-Groups-Sign-on-Letter-Trans-Sports-4.9.19.pdf>.

CERTIFICATE OF SERVICE

I certify that on April 3, 2023, the foregoing was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. All counsel of record are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Jessica L. Ellsworth

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with the type-volume limitations in Federal Rule of Appellate Procedure 27(d)(2)(A) because it contains 945 words, excluding those parts of the motion exempted by the rules.

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman 14-point font.

Dated: April 3, 2023

/s/ Jessica L. Ellsworth

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